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IMPLEMENTATION OF THE INTERNATIONAL DRUG CONTROL TREATIES

Adequacy of existing national drug control legislation

Note by the Secretariat

Summary

A review of national legislation indicated that most of the States parties to the Single Convention on Narcotic Drugs of 1961 and to the Convention on Psychotropic Substances of 1971 have enacted the basic legislation required for the implementation of those Conventions. Implementation of legislation is however often frustrated by lack of resources and expertise. Although the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 has been in force for only four years, much legislative activity has occurred to implement its provisions.

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INTRODUCTION

1. The Commission on Narcotic Drugs at its thirty-seventh session requested the Secretariat to prepare a note on the adequacy of existing national drug control legislation, for consideration under the agenda item on implementation of the international drug control treaties. The evaluation contained in the present note has been prepared in response to that request.

2. As of 31 October 1994, 149 States were parties to the Single Convention on Narcotic Drugs of 1961,[1] or to that Convention as amended by the 1972 Protocol,[2] 132 were parties to the Convention on Psychotropic Substances of 1971,[3] and 103 were parties to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.[4] Each of those conventions contains numerous provisions which create obligations for parties and require the adoption of corresponding national legislative or administrative provisions. National drug control laws and regulations are regularly communicated to the Secretary-General by States parties to the conventions as well as by States non-parties on a voluntary basis.

3. The focus of the present note is on whether national legislation of States parties adequately translates into their domestic order the obligations they have subscribed to under the international drug control treaties. Rather than an analysis of existing legislation party by party and convention by convention, which would be impracticable in the framework of the present note, a survey of salient features of the legislative implementation of the three conventions will be provided.

4. Comments related to the 1961 and 1971 conventions are mainly on legislation adopted to implement control measures concerning licit drug-related activities. Both conventions also include provisions on action against illicit traffic, seizure and confiscation, and penal sanctions. Implementing legislation on those matters is, however, presented under the heading of the 1988 Convention, which builds upon and expands the provisions of the previous conventions in the area of measures against illicit traffic.

5. All three conventions also deal with measures against illicit demand and abuse of drugs, and with alternatives to conviction and punishment for drug abusers. The implementation of those provisions is the subject of other documents submitted to the Commission under the agenda item on demand reduction, and will therefore not be reviewed in the present note.

6. In order to be considered adequate or inadequate, national legislation should be placed in the perspective of practical implementation experience. The implementation of the 1988 Convention does not offer enough critical distance for that purpose. As regards the 1961 and 1971 Conventions, implementation problems have been brought to light through the years by the International Narcotics Control Board, which is entrusted with the monitoring of those two conventions.

I. SINGLE CONVENTION ON NARCOTIC DRUGS OF 1961

A. Legislation enacted

7. Most of the 149 States parties to the 1961 Convention, as well as a number of States not yet parties, have adopted a comprehensive control system in order to regulate the licit production, manufacture and distribution of and international trade in narcotic drugs and to limit their use to medical and scientific purposes, as required under the Convention.

8. Narcotic control provisions may be included in a dangerous drugs act or controlled substances act, in a poisons ordinance, a food and drug act or a pharmacy law, depending on the various denominations and categorizations of narcotic drugs in each country. In a number of States, the control system is based on legislation adopted well before the 1961 Convention and not amended since then. Former colonies for example often appear to be operating from old metropolitan legislation.

9. According to data available to the Board, even in countries which do not appear to have adopted adequate narcotics control legislation, the control system of the domestic trade and import and export of narcotic drugs functions rather efficiently.

B. Substances controlled

10. The schedules of the 1961 Convention may be amended following a thorough procedure detailed under article 3. Some laws provide that decisions of the Commission to modify the schedules will be regarded as automatically modifying the national scope of controlled substances. Other laws set up a simplified system allowing substances to be added, deleted or transferred in the national schedules through an administrative order, for instance from the ministry of health. In any case, the process of amending the national schedules should be dissociated from the lengthy and heavy process of legislative amendment. The occasional issue of consolidated lists including all successive amendments is a useful procedure.

11. The 1961 Convention provides for various regimes applicable to different categories of drugs, to preparations containing them, and to plants under control. National laws, however, often reflect a different approach based on the specific needs of a given State. Thus, some States limit national control measures to drugs actually in use in their territory.

C. Internal control measures

12. Most national laws contain detailed provisions aimed at limiting to medical and scientific purposes the trade, possession and use of narcotic drugs. Participation in any phase of the trade in narcotic drugs - manufacture, wholesale and retail trade - is subject to the obtention of a license, to record-keeping and reporting obligations and to a system of inspection. Medical prescriptions are required for the dispensation of drugs to individuals. In several countries, however, in particular in Africa and in Asia and the Pacific, legal provisions on internal control measures, in particular concerning the status and functions of drug inspectors, are often not applied because of a shortage of resources and the weakness of administrative structures.

D. External control measures

13. All parties have established a licensing system to control the international trade in narcotic drugs and, when they permit the import and export of drugs, require import certificates and export authorizations. Such monitoring of licit international trade functions satisfactorily in preventing diversions from international trade into illicit channels.

14. Some practical problems, however, have been identified in several developing countries regarding the import of narcotic drugs by the armed forces, some transnational companies or some humanitarian organizations. The latter issue is currently being reviewed by the Board.

E. Control of licit poppy cultivation

15. Opium is subject under the 1961 Convention to specific control measures, in addition to the measures applicable to all drugs in Schedule I. States parties that produce opium are required to furnish to the Board annual estimates of quantities to be produced.

16. States parties are only required to indicate the surface area and geographical location of land used for the cultivation of opium poppy. The opium poppy can also be cultivated for purposes other than the production of opium, such as the production of seeds used in cooking and the manufacture of pharmaceutical products from poppy straw. The 1961 Convention does not provide for an effective control of the cultivation of opium poppy for purposes other than the production of opium, in spite of the fact that it may lead to diversion into the illicit traffic.

17. Some countries in which opium poppy is cultivated for poppy straw production have introduced licensing measures on a voluntary basis in order to prevent diversion. In other countries, where opium poppy is cultivated for the production of seeds, in particular in eastern and central European countries, national laws do not provide for the control of opium poppy growers or the limitation of areas for cultivation, and therefore do not adequately hinder possible diversion into illicit traffic.

18. In some Asian countries, national laws recognize a traditional character to the cultivation of opium poppy among certain ethnic groups, while prohibiting it outside those traditional areas.

F. Control of coca leaf

19. The coca leaf is defined as a drug under the 1961 Convention and is subject to all control measures applicable to narcotic drugs under Schedule I to which it belongs. Parties are therefore required to take necessary legislative and administrative measures to limit exclusively the production of coca leaves to the amounts needed for legitimate purposes, namely the licit manufacture of cocaine and the manufacture of a flavouring agent for beverages.

20. A provisional reservation was permitted under the Convention to allow for a transition in countries where coca leaves were traditionally chewed. The Board has already drawn attention to the non-conformity with international treaties of the legislation of countries where, in spite of the expiry of the transitional period, national laws continue to authorize the chewing of coca leaves and their use for the manufacture of commercial products (coca tea and coca toothpaste).

II. CONVENTION ON PSYCHOTROPIC SUBSTANCES OF 1971

A. Legislation enacted

21. Most of the 132 States parties to the 1971 Convention have adopted adequate legislative provisions for the control of psychotropic substances. In addition to States parties, several States non-parties to the 1971 Convention have also introduced psychotropic control measures into their national legislation. While some States have adopted a specific law for the control of psychotropic substances, many others have merely extended the scope of their narcotics control legislation to psychotropic substances, and included the latter under the narcotic drugs schedules, or they deal with the control of psychotropic substances under the general pharmaceutical legislation.

22. Shortcomings in the national legislation of States parties are partly reflected in the annual reports to the Board on manufacture of and trade in psychotropic substances required under article 16. Some

20 States parties do not regularly furnish those reports, or furnish only incomplete or unreliable reports. Most of those States have only limited and inadequate provisions for the control of psychotropic substances. In a number of States the requirements of the 1971 Convention have been reflected only in the penal law by establishing certain activities related to psychotropic substances as offences. In such cases, national legislation cannot be considered adequate since the main requirements of the 1971 Convention concern the regulation of licit activities.

B. Substances controlled

23. One hundred and five substances are currently controlled under the 1971 Convention (25 in Schedule I, 14 in Schedule II, 8 in Schedule III and 58 in Schedule IV). The scheduling criteria adopted under the 1971 Convention are more restrictive than those applied under the 1961 Convention. Schedules may be amended by the Commission following a procedure detailed in article 2. Parties are required to extend the scope of national control to newly scheduled substances, although they may avail themselves of the possibility provided in paragraph 7 of article 2 to apply more limited control measures to a newly scheduled substance, after notification and in view of exceptional circumstances. In some States, schedules of substances under national control are updated with several years delay. The adoption of automatic or simplified procedures for bringing new substances under national control would improve the control system.

C. Internal control measures

24. The 1971 Convention aims at limiting the use of substances in Schedule I - dangerous substances of little or no proven therapeutic value, such as LSD and other similar hallucinogens - to scientific and very limited medical purposes. Parties have to establish a licensing system for the manufacture and distribution of and trade in substances in the other Schedules, and impose record-keeping and reporting obligations, as well as a system of inspection. Dispensation to individuals can be made only pursuant to medical prescriptions.

25. It appears that internal control measures required under the 1971 Convention are adequately reflected in the national legislation of many States parties. Some Governments, though not equipped with adequate legislative provisions, are able to ensure internal control measures by way of administrative orders. In many developing countries, however, internal control measures cannot be properly implemented because of a lack of resources and non-functioning of the administration. Prescription requirements, for instance, are not complied with, and parallel markets function beside the licit distribution system.

D. External control measures

26. The 1971 Convention places emphasis on internal control measures over the manufacture and distribution of psychotropic substances. With regard to international trade, only substances in Schedule II are subject to a mandatory system of import and export authorizations. This limited control mechanism has not proven effective in preventing large-scale diversions of psychotropic substances, and, pursuant to recommendations of the Board endorsed by Economic and Social Council resolutions, has been strengthened by additional measures. A simplified estimate system - similar to the estimate system of medical and scientific needs under the 1961 Convention - has been successfully introduced for substances under Schedule II, and later extended to the substances in the other schedules. The application of the import and export authorization system has been extended to substances in Schedules III and IV.

27. Compliance with the simplified estimate system does not require the enactment of legislative provisions. As regards the export and import authorization system, 106 States parties are known to have extended it to all substances under Schedules III and IV or a large part of them; 19 States parties do not apply it to any substances under those Schedules, or apply it to only very few. Many States have introduced corresponding provisions in their drug control legislation, while some others are able to reach the same result through administrative regulations or instructions.

28. While most States not parties to the 1971 Convention are voluntarily cooperating with the Board to the extent possible under their national legislation, some major manufacturing and exporting countries among them have not yet adopted the legislation necessary to effectively control international trade in psychotropic substances under Schedules III and IV, thereby affecting the efficacy of controls in importing countries and creating a significant gap in international control mechanisms. It should be noted in that respect that article 13, on prohibition of and restrictions on export and import, enables parties to protect themselves against unwanted imports of psychotropic substances and their preparations, which are not subject to the import and export authorization system. Only a very limited number of countries - 19 parties and three non-parties - have so far taken advantage of article 13, and prohibited 59 different psychotropic substances and their preparations.

III. UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES OF 1988

A. Legislation enacted

29. The adoption in December 1988 and entry into force in November 1990 of the 1988 Convention have been accompanied by a wide legislative movement. Many States have been prompted to revise their whole drug control legislation, by adopting comprehensive drug control laws covering the regulation of licit activities, the prevention of drug abuse, the treatment and rehabilitation of drug abusers, as well as the definition of offences, sanctions and investigatory powers. Other parties have adopted provisions of a more limited scope on specific areas such as precursors control, international cooperation or the control of drug trafficking proceeds.

30. The critical distance to assess the legislative implementation of the Convention is, however, limited, since less than four years have elapsed since its entry into force. Moreover, although the control of precursors is monitored by the Board under the provisions of article 12, the 1988 Convention, contrary to its predecessors, does not provide for a specific general monitoring mechanism, except to entrust the Commission with the review of the operation of the Convention, as provided for in article 21(a). Comments on the adequacy of legislation will therefore not focus on specific implementation problems, but rather consist in a general review of the laws communicated so far to the United Nations International Drug Control Programme (UNDCP) on key topics of the Convention. A background information paper containing lists, by subject-matter, of all laws and regulations concerning the 1988 Convention held in the UNDCP legal library has been prepared by the Secretariat, and will be available to the Commission.

B. Offences and sanctions

31. The 1961 and 1971 Conventions already included penal provisions. Under the 1988 Convention, however, the definition of offences and sanctions plays a pivotal role, since that Convention is mainly concerned with the detection and repression of illicit drug activities. Acts that parties are required to establish as criminal offences are enumerated under article 3. Part of that enumeration on illicit cultivation, production or supply of drugs merely recapitulates the penal requirements of the previous

conventions, which many States had already translated into provisions of their drug control law or penal code.

32. Other items under article 3 constitute innovations. Parties are required, for instance, to establish as criminal offences the manufacture, transport or distribution of precursors when done with the knowledge that they will be used for the illicit manufacture of drugs. Such a provision has been introduced in the penal legislation of many parties. Experience shows that arrests related to the illicit use of precursors often occur after the supply of precursors but before the manufacture of drugs. Therefore, the establishment of the illicit possession of precursors as an offence also appears necessary. A specific offence of possession of equipment and materials with the intention to use them in the illicit manufacture of drugs is lacking in many laws, and should be established in order to reach such conduct without having to resort to conspiracy law.

33. The offence of money-laundering constitutes another innovative item under article 3, and has led numerous parties to introduce in their national laws new provisions establishing money-laundering as an offence. While the 1988 Convention relates exclusively to the laundering of drug trafficking proceeds, a number of those laws deal with the laundering of property derived from serious offences in general. In many cases, money-launderers are made liable to penalties of lengthy imprisonment and significant fines.

34. Some countries that have not explicitly established money-laundering as an offence may consider that such conduct is covered under the ancillary offences of aiding, facilitating or counselling. These offences, however, are linked to the preparation or carrying out of the main offence, whereas money-laundering intervenes after the commission. It is, therefore, advisable to establish it separately.

35. The definition of the offence of money-laundering varies from one law to the other. Some acts specify the types of operations through which money-laundering can be achieved, while other provisions define the offence by reference to its purpose or effect, in particular concealment of the illicit origin, true nature or ownership of property, or assistance to the offender to retain the benefits of the offence and evade the legal consequences of his actions. Some parties have gone further by also establishing the intentional purchase, possession or use of illicit property as an offence.

36. The element of knowledge - that the property was derived from an offence - is required under all laws, but approached in various ways. Some laws do not define the standard of proof applicable to the element of knowledge. Others consider that there was knowledge if the person charged had reasonable grounds to suspect the illicit origin of the proceeds. Other laws are still stricter, and consider the knowledge proven in case of negligence or non-respect of professional obligations of vigilance.

37. The 1988 Convention only requires States to criminalize money-laundering. Many States have gone further by adopting preventive measures, in accordance with the requirements of various regional instruments and the recommendations of the Financial Action Task Force established by the Heads of State or Government of the seven major industrialized countries (Group of Seven) and the President of the Commission of the European Communities. Several laws, in particular in member States of the European Community (EC), provide for measures to prevent the financial system from being used for money-laundering. They impose various obligations on institutions and professions that carry out or advise on movements of capital. The most recent laws tend to broaden the range of financial actors and professions concerned by these regulations.

38. The obligations imposed on such institutions include the obligation to identify the customer or the actual beneficiary of the operation; to exert vigilance on operations involving amounts exceeding a certain threshold and surrounded by unusual conditions; to maintain and preserve certain records; and

to report on suspicious operations either to the law enforcement authorities or, when it exists in the country concerned, to the office specialized in money-laundering intelligence. Some laws also provide for the interdiction or mandatory reporting of cash transactions above a specified threshold amount, and for the obligation to report international transfers of funds and securities of a certain amount. Other laws enable the authorities to seize cash meant for import or export and suspected of being drug trafficking proceeds.

39. To accompany such preventive measures, the laws generally establish as offences conduct which constitutes a breach of vigilance or a breach of cooperation with law enforcement authorities, such as warning a customer that a suspicious operation has been reported. Those offences are made liable to fines and, for the most serious ones, to imprisonment, as well as optionally to professional sanctions. On the other hand, required disclosure of information is not treated as a breach of any obligation of secrecy or any restriction upon disclosure imposed by contract or rules of professional conduct.

C. Confiscation of proceeds

40. Article 5 of the 1988 Convention requires parties to confiscate drug trafficking proceeds. Such proceeds include not only property derived from traditional trafficking offences of import, export, production, cultivation and distribution, but also from illicit operations involving precursors and money-laundering activities. Numerous States have provided in their national legislation for the confiscation of drug proceeds. Relevant provisions show a great variety of approach as to the scope and conditions of confiscation.

41. Many laws have introduced a scheme of confiscation in which, when a person is convicted of a drug trafficking offence, the court determines whether he has benefited from drug trafficking and assesses the amount of such benefit. Confiscation is ordered of a sum representing the benefits and is exercised in respect of all assets of whatever origin held by the offender at the time of the order. In several laws, benefits are defined as including the gains obtained from the transformation, conversion or intermingling of the original benefits, as well as the income or other monetary benefits subsequently derived from them.

42. Another approach adopted in some laws defines the proceeds to be reached by confiscation as the actual proceeds of the offence or "tainted property". That system is less onerous on the defendant, since property will be confiscated only if it can be shown that it has been actually derived from the charged offence; legitimate assets are left out of the reach of confiscation. That approach is sometimes combined with the other scheme of value assessment, in cases where the actual tainted property is not available for confiscation because it cannot be located, has been diminished in value, has been commingled or has been transferred to a third party.

43. The laws adopted also reflect various possible approaches to the proof of the illicit origin of property. Some provisions set up rebuttable presumptions, for instance that all property acquired before the beginning of the proceedings within a defined period of time is property derived from drug trafficking. The onus of proof shifts in that case to the offender, who must satisfy the court that the assumption is incorrect. Several laws also state that the standard of proof applicable to the confiscation proceedings is the civil standard of balance of probabilities, instead of the more onerous criminal standard of proof beyond reasonable doubt. Several laws provide for the possibility of proceeding with confiscation independently from a conviction, in particular when the person charged has absconded or died.

44. Provisions on the confiscation of proceeds are, however, by themselves not sufficient unless national laws or regulations also enable competent authorities to identify and trace proceeds and to

freeze or seize them for the purpose of confiscation. In that respect, measures for the prevention of money-laundering constitute first steps towards identifying and tracing profits for eventual confiscation. In addition to those measures, several parties have made available in their laws special investigation powers to judicial and other competent authorities.

45. Such investigation powers include powers to obtain information and order the production of records, including bank and financial records. In many laws such powers override bank secrecy provisions; the refusal to disclose information is made liable to a penalty, and the act of disclosure is protected from civil or penal liability arising from conflicting obligations. Several laws also enable the competent authorities to apply, before or after conviction, their search and seizure powers to gather evidence in the investigation into drug trafficking proceeds.

46. Other investigation powers provided for in some laws include the power to monitor bank accounts. On the basis of strong suspicion and for a limited period of time, the competent authority may direct a bank or other financial institution to give information about transactions conducted through an account. Some laws also enable competent authorities, subject to similar conditions, to place telephone lines under surveillance, in order to gather evidence and identify property for confiscation.

47. Freezing and seizure powers are also essential for the purpose of confiscation, in order to prevent property from being removed from jurisdiction, hidden or dissipated. Most of the laws that provide for the confiscation of proceeds indeed also enable the courts to order the restraint of property or its seizure. Usually those provisional measures may be ordered ex parte (without the owner being previously informed and called), and are immediately enforceable. Detailed provisions regulate various questions such as which property is liable to be restrained or seized, the provision for living or legal expenses, the mechanism to have the property managed or dealt with and the procedure for variation or rescinding of such measures.

48. Finally, article 5 of the 1988 Convention provides that confiscated proceeds or property should be disposed of by a party according to its domestic law and administrative procedures. Many laws provide for the confiscated proceeds to be allotted to national drug control funds, narcotics control councils or treatment centres, and to be reinvested into law enforcement or prevention and treatment drug control activities.

D. Extradition

49. Extradition requests may arise in different contexts between parties to the 1988 Convention. They may be linked by an extradition treaty; they may have no treaty and decide when need arises to let article 6 function as an extradition treaty between them; and they may be able to request extradition or respond to an extradition request without the need for an extradition treaty, on the basis of national legislation.

50. UNDCP holds the texts of a number of bilateral treaties as well as laws related to extradition. Those instruments, however, do not give a complete picture of how extradition for serious drug offences functions between parties since the adoption of the 1988 Convention. Based on the limited information available, a few comments may be made on the implementation of the extradition provisions of the Convention.

51. Some States, in particular those with a common-law legal system, are able to grant extradition on the basis of a treaty that can be directly applied, without the need for implementing legislation. It is none the less advisable that each State be equipped with legislative provisions on extradition in order to regulate situations arising in the absence of an extradition treaty if they are not able to apply the

provisions of article 6 directly in their domestic legal order, or in order to implement and complete the extradition treaties they have concluded.

52. The first aim of article 6 is to ensure that serious drug offences defined under the 1988 Convention are treated as extraditable offences between parties. Some laws, mainly from common-law countries, define extraditable offences by means of a schedule of offences, in which they include an item on offences against the law relating to dangerous drugs; another approach adopted in a number of laws consists in defining a minimum penalty (one year imprisonment, for instance) that the offences must carry under the laws of both the requested and requesting States in order to be extraditable. In some cases, extraditable offences are enumerated in a list, and a minimum penalty is defined as an additional condition that may entail refusal to extradite.

53. Double criminality is a traditional requirement for extradition. Legislative provisions should set out a test of double criminality by which all acts and omissions constituting such conduct are taken into consideration as a whole, and differences in the name of the offence or in the category to which it belongs under the two legal systems are disregarded.

54. In many extradition laws, the definition of an offence as political constitutes a mandatory ground for refusal to extradite. Which offences are considered as political is usually left to case-law rather than to written legislation. It must be recalled in that context that article 3 on offences and sanctions requires, for the purpose of international cooperation under the Convention, that parties should not consider serious drug offences as fiscal or political offences.

55. In order to expedite extradition procedures as required under the 1988 Convention, parties should include in their legislation a provision enabling their competent authorities to extradite a fugitive after receipt of a simple request for provisional arrest (for which documentary requirements are limited), provided that the person sought consents to the extradition.

56. Some countries, mainly of the civil-law tradition, have constitutional or legislative provisions precluding the extradition of nationals. They are expected under the 1988 Convention to submit the case for prosecution, or consider the enforcement of the sentence imposed by the requesting State. On the other hand, most common-law countries, having a territory-based jurisdiction, are not in a position to exercise extraterritorial jurisdiction over their nationals, and should be prepared to extradite their own nationals.

57. Parties are encouraged under article 6 to conclude bilateral and multilateral agreements to enhance the effectiveness of the provisions of the Convention. The Crime Prevention and Criminal Justice Branch of the Secretariat has established a Model Treaty on Extradition (adopted by General Assembly resolution 45/116 of 14 December 1990) that may provide a useful basis for the drafting of such agreements. Regional cooperation can also be achieved through the adoption of harmonized legislation among countries with a similar legal context. The Scandinavian countries, for instance, implement a regional scheme based on uniform extradition laws.

58. Article 6 finally encourages parties to transfer prisoners to their home country to serve their sentences there. A Model Agreement on the Transfer of Foreign Prisoners,[5] also prepared by the Branch, may assist States in the development of bilateral or multilateral agreements on the subject. Several parties to the 1988 Convention have adopted legislation on the transfer of offenders.

E. Mutual legal assistance

59. In the area of mutual legal assistance as well, parties are encouraged by the 1988 Convention to conclude bilateral and multilateral agreements. Many regional agreements have indeed been adopted, for instance under the auspices of the Council of Europe, the Economic Community of West African States, the Organization of American States and the South Asian Association for Regional Cooperation. Numerous bilateral mutual assistance treaties have also come to the attention of UNDCP, as well as a number of model treaties developed bilaterally or under the auspices of the Branch, to assist States in negotiating networks of bilateral arrangements.

60. There has also been considerable legislative activity to implement the mutual legal assistance (article 7) and international confiscation (article 5, paragraphs 4 and 5) provisions of the Convention. Such legislation often applies to serious crime in general and not only to drug-related offences.

61. Implementation experience so far indicates that obstacles to mutual assistance often lie in practical difficulties encountered by competent authorities in identifying their counterparts and establishing fast, efficient channels of communication. Other implementation problems are due to disparities of legal and procedural requirements under different legal systems. Article 7 of the 1988 Convention provides that requests for assistance should be executed in accordance with the domestic law of the requested party, and where possible in accordance with the procedures specified in the request. Awareness of the legal requirements of the requested State is essential to formulate effective requests. For instance, investigations are usually conducted under judicial supervision in civil-law countries, whereas they are entrusted to police officers in common-law countries. An assistance request at the investigation stage issued by a non-judicial officer will frequently not be receivable in civil-law countries, unless it is certified by a judicial authority. Such legal or procedural constraints should be understood and taken into account to avoid delay or even refusal of assistance. For that purpose, guidance materials have been developed by some parties to inform requesting States on key procedural and substantive constraints that limit their ability to execute certain requests.

62. Domestic legislation on mutual legal assistance should also take into account such disparities and enable competent authorities to grant or use assistance with the required flexibility. In the area of evidence gathering for instance, the procedures for taking evidence from a witness differ greatly between countries with common-law and civil-law systems. parties should, on the one hand, enable their authorities to gather evidence in a form admissible in the requesting State, for instance by allowing foreign officials to be present, or by providing for the possibility to question a witness according to various procedures. On the other hand, States should provide for flexible provisions concerning the admissibility of evidence obtained from foreign States, according to procedures different from their own.

F. Controlled delivery

63. Several States have adopted legislative provisions to empower their competent authorities to undertake controlled deliveries. Most of those laws contemplate both domestic and international controlled deliveries. Some of them outline conditions for cooperation with other countries. In many cases, however, the basis for cooperation in carrying out controlled deliveries at the international level may be defined better through bilateral agreements or arrangements than by national law.

64. The implementation of the provisions of the 1988 Convention on controlled delivery, however, does not always require legislation. It must be noted that the use of that law enforcement technique is also widespread in various countries, such as Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America, where no legislation explicitly authorizes it. In such cases, the use of the technique is left to the discretion of the law enforcement officers who detected an offence.

G. Control of precursors

65. Article 12 on precursors only provides for general control measures, and leaves to the discretion of parties the translation of its provisions into specific national measures. The requirements of countries vary according to their situation as drug-manufacturing countries, or chemical-producing, importing, exporting or transit countries.

66. Significant efforts have been made at the regional level to develop harmonized legislation, in particular in Europe and in America. The Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States has developed Model Regulations to Control Chemical Precursors and Chemical Substances, Machines and Materials. Most CICAD member States have now incorporated those model regulations into their national legislation. The Commission and the Council of Ministers of the European Communities have adopted regulations to control the international trade in precursors, and issued directives to control the manufacture of and trade in precursors within EC members States, which are in the process of adopting harmonized legislation in that area. Model legislation has also recently been developed by UNDCP.

67. Whether in the framework of a regional harmonization initiative or independently, a large number of States have adopted legislative provisions relevant to the control of precursors, or are in the process of doing so. In many other States, however, the adoption of adequate legislation is still hindered by domestic policies on deregulation of the chemical industry and by concern about the impact that the control of precursors could have on licit chemical trade. Several major manufacturing, exporting and transit countries are not yet parties to the 1988 Convention, and lack a suitable legal framework for control. In other cases where legislation exists, it does not focus on the use of precursors in the illicit manufacture of drugs, but on their potential for abuse as psychotropic substances or their nature as hazardous chemicals, and is therefore inadequate. Other areas of weakness in legislation identified by the Board relate to the control of transactions in transit countries, in particular transactions handled by brokers, and to control measures in free trade zones or ports.

68. Even in cases of countries equipped with adequate legislation and a firm legal basis for the control of precursors, inadequacies often occur at the level of implementation. Control measures may be weakened by the lack of effective cooperation mechanisms between countries - exporting, transit and importing countries for instance; by the lack of coordination within a country between different law enforcement authorities; or by the absence of cooperation between control authorities and the chemical industry. There is, therefore, a need for countries to establish effective working mechanisms, in order to implement existing legislative provisions, or even in the absence of such legislation.

IV. CONCLUSION

69. To conclude the general comments on adequacy of existing national legislation, it should be recalled that UNDCP has intensified its cooperation with individual requesting States in the assessment of their needs for new or revised legislation, in the drafting of the required laws and regulations, in the legislative approval process, and in the implementation phase. Surveys of treaty provisions that need to be incorporated into national legislation have been prepared, and are available on request, as are model laws covering most of the subject-matters of the three major drug control treaties.

70. In an effort not only to assist States in modernizing their national legislation, but also to help ensure regional legislative harmonization, increasingly acknowledged as a basis for efficient international cooperation, UNDCP is organizing a series of regional legal workshops towards the preparation and

adoption of harmonized drug control legislation, while supporting the building or strengthening of national institutions and human resources development.

71. While stressing the fundamental importance of national legislation for treaty implementation and for an efficient drug control system, it should be noted that the day-to-day application of control measures also depends on a number of other factors, such as administrative policies, the working mechanisms used by the control authorities and the human and financial resources available for drug control. Such factors are often decisive for the implementation of legislative provisions.

72. The political will and enlightened self-interest that led States to adhere to the international drug control treaties needs to be translated into a firm commitment to implement their provisions through appropriate administrative measures, collaborative action and the allocation of the required budgetary resources. The international drug control system, based on treaty provisions elaborated by States for the protection of the health and welfare of their citizens, can only be effective if national commitments result in practical action and concerted efforts to achieve the objectives of the treaties.

Notes

[1]United Nations, Treaty Series, vol. 520, No. 7515.

[2]Ibid., vol. 976, No. 14152.

[3]Ibid., vol. 1019, No. 14956.

[4]E/CONF.82/15 and Corr.2.

[5]Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.